

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant/Cross-Respondent,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent/Cross-Appellant,

And

AMERICAN BROADCASTING
COMPANIES, INC.; THE
ASSOCIATED PRESS; CABLE NEWS
NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNT-TV; LOS
ANGELES TIMES
COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS, LLC;
WP COMPANY, LLC, D/B/A THE
WASHINGTON POST,

Respondents.

Case No.: 75518

Electronically Filed
Mar 22 2019 12:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court Case Nos.: A764030; A764169,
The Honorable Tierra Jones Presiding.

**APPELLANT/CROSS-
RESPONDENT LVMPD'S REPLY
BRIEF AND ANSWERING BRIEF**

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I. INTRODUCTION.

In its Opening Brief, the Las Vegas Metropolitan Police Department (“LVMPD”) asserted that the District Court erred by: (1) requiring production, rather than inspection, of Body Worn Camera (“BWC”) footage when it was time-consuming and cost-prohibitive to redact confidential information; (2) prohibiting LVMPD from charging an hourly rate for the staff time LVMPD actually incurred for time spent on reviewing, redacting, and producing records, including the BWC footage and 911 calls; and (3) permitting Respondents¹ to make installment payments instead of ordering payment in advance of production.

Despite representing to this Court, and the lower court, that production of the records would not affect LVMPD’s appeal rights, LVRJ now contends LVMPD’s appeal concerning production of BWC footage is moot. Indeed, LVRJ previously asserted that LVMPD’s appeal would not be moot. LVRJ should be estopped from now claiming LVMPD’s appeal is moot. More importantly, LVRJ’s petition in the lower court did not seek access to BWC footage. Accordingly, LVRJ lacks standing to make any arguments related to the same.

¹ Respondents include American Broadcasting Companies, Inc. (“ABC”), the Associated Press (“AP”), Cable News Network, Inc. (“CNN”), Chesapeake Media I, LLC, d/b/a KSNV-TV (“KSNV”), Los Angeles Times Communications, LLC (“LA Times”), The New York Times Company (“NYT”), WP Company LLC d/b/a The Washington Post (“Washington Post”) (collectively the “Media”) and the Las Vegas Review-Journal (“LVRJ”).

Regardless, LVMPD's appeal regarding BWC footage is subject to the exception of the mootness doctrine. As LVRJ admits, LVRJ and LVMPD have other ongoing public record matters, and it is likely that this issue will present itself again. Additionally, the issue of production of BWC footage in a public records case has a tendency to evade review because of the short timeframe involved in comparison to a civil litigation lawsuit. Finally, BWC footage, and public records generally, are matters of public concern. LVRJ also argues LVMPD's extraordinary use argument is moot. To the contrary, the only scenario in which this issue would be moot is if Respondents paid LVMPD the amount it is seeking. LVMPD is seeking to recover costs for staff time and production of electronic records in accordance with NRS 239.055, which the District Court expressly prohibited. Thus, there remains a live controversy for this Court. Nevertheless, for the same reasons the BWC footage is subject to the exception of the mootness doctrine, so is LVMPD's extraordinary use argument.

LVMPD has not waived its ability to appeal the BWC footage issue. Respondents claim that LVMPD cannot raise the issue on appeal because it did not comply with the Disclosure Order. Yet, the Respondents cannot direct this Court to anywhere in the record where the District Court found that LVMPD failed to comply with the Disclosure Order. LVRJ claims that LVMPD had an obligation to meet and confer and then seek a protective order. While the Disclosure Order does

require LVMPD to meet and confer if redactions were not practicable, which LVMPD did, nothing in the Disclosure Order mandates LVMPD to seek a protective order. LVMPD timely made its arguments before the District Court, and it denied the same. It is not LVMPD's position that the Respondents should not have access to the records, but that the BWC footage should have been subject to inspection. A protective order is not the proper procedural vehicle for inspection, and LVMPD was prohibited from bringing the exact same arguments after the District Court made its ruling. Additionally, the Respondents' position that inspection does not comport with the Nevada Public Records Act ("NPRA") is demonstrably false. The NPRA allows a requester to either inspect or obtain a copy of the record. Thus, inspection of BWC footage in this instance, where there is over 748 hours of video to review, redact, and produce, is consistent with the NPRA and the purpose and policy of NRS 289.830.

Without any supporting authority, LVRJ makes the assertion that its constitutional rights are violated by paying LVMPD for the cost associated with production of records for which it sought a court order. The gravamen of LVRJ's claim is that the public was provided access to the records. LVRJ's reasoning is entirely inconsistent and completely contrary to the purpose and policy of the NPRA. The NPRA prohibits LVMPD from charging additional requesters for extraordinary use if duplication of the information did not require extraordinary

use. NRS 239.055. Furthermore, the Disclosure Order deemed the records sought as “public records.” The Disclosure Order does not, in any way, limit to whom LVMPD can provide records. If LVRJ’s constitutional rights are violated, LVRJ’s remedy is to file a lawsuit—not raise the issue on appeal.

The District Court determined that LVMPD’s response to Respondents’ public records requests would necessitate extraordinary use of its personnel and technological resources for reviewing, redacting, and producing records. Neither LVRJ nor the Media have appealed that finding. As such, the only issues before this Court regarding NRS 239.055 are: (1) whether NRS 239.055 permits LVMPD to charge the hourly rate of employees for the staff time actually incurred; (2) whether NRS 239.055 encompasses production of electronic records; and (3) whether payment for extraordinary use must be submitted to the government entity in advance.

NRS 239.055 clearly limits the copy charges a government entity can impose when extraordinary use of personnel or technological resources is involved. If a government entity utilizes extraordinary use of its personnel, it is permitted to charge the cost for the staff time that the entity actually incurred. Otherwise, the additional fee provision in NRS 239.055 is rendered meaningless. Moreover, the legislative history unequivocally indicates that the 50-cent limitation was limited to copy charges. Additionally, nothing in NRS 239.055 excludes its application to

electronic records. Both LVRJ and the Media ignore the term “technological resources” within the statute. As an example of what could be charged under NRS 239.055, the Legislature explained that if a government entity had to write a computer program to produce records, it could recover related costs under NRS 239.055. If this Court were to follow the District Court’s and Respondents’ logic of limiting NRS 239.055 to paper documents, the “technological resource” provision would be eviscerated. On a similar note, the language in the NPRA requiring a government entity to inform a requester of the additional fees to be incurred for extraordinary use would be superfluous if the government entity was required to prepare and produce the records prior to receiving payment. The purpose and policy of the estimate within NRS 239.055 support LVMPD’s interpretation of receiving payment in advance.

For its cross-appeal, LVRJ asks this Court to read a waiver provision into the NPRA. The NPRA makes no reference to waiver of the confidential status of a record. As initially drafted, NRS 239.0107 did include such language. However, the Legislature recognized that it could not permit a government entity to waive the confidential status of a record because it did not respond within five days. Additionally, LVRJ’s remedy is to seek judicial relief from the Court for access to records, and this Court is prohibited from reading an additional remedy into the

NPRA. Accordingly, this Court should affirm the lower court's ruling that LVMPD did not waive its right to assert privileges or confidential status.

LVRJ also challenges the Disclosure Order requiring redaction of personal identifying information. LVRJ claims that the redactions permitted by the lower court were too broad. It is well established that personal identifying information is confidential. Moreover, this Court recently recognized the importance of an individual's privacy interest in relation to public records. Additionally, NRS 239B.030(5) requires LVMPD to remove personal information received by an individual from any document that is not required to contain such personal information. Therefore, the District Court did not abuse its discretion when it required LVMPD to redact personal identifying information from the requested records.

Additionally, LVRJ appeals the District Court's findings that the dispatch log was subject to the geographic information system ("GIS") fee provision. NRS 239.054. Interestingly, LVRJ does not dispute that LVMPD's computer-aided-dispatch ("CAD") system is a GIS. Rather, LVRJ argues that the dispatch log is not a GIS. NRS 239.054 permits LVMPD to charge for information that is created by the GIS. The dispatch log is created from the CAD system; thus, it is subject to the fee provisions outlined in NRS 239.054.

LVRJ has waived the final two issues it raises on its cross-appeal. First, LVRJ claims that the District Court erred when it did not require LVMPD to produce a privilege log identifying what was redacted from the records produced. LVRJ, however, never made such a request to the District Court. Instead, it asked that LVMPD be required to provide an index of all the records it was withholding. Because the District Court ordered all records to be disclosed, LVMPD could not provide a log of withheld records. Second, LVRJ asserts that the District Court erred by failing to hold an evidentiary hearing on costs. LVRJ did not ask for this relief below. In fact, at the hearing, counsel for LVRJ was adamant that LVMPD was not entitled to any costs at all. Because LVRJ did not request an evidentiary hearing below, it cannot raise it for the first time on appeal. Thus, this Court must decline to consider these two issues.

II. LEGAL STANDARD

This Court reviews a district court's decision to grant or deny a petition for a writ of mandamus under an abuse of discretion standard. *See City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003). "A manifest abuse of discretion is '[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.'" *State v. Eighth Judicial Dist. Court*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (quoting *Steward v. McDonald*, 330 Ark. 837, 958 S.W.2d 297, 300 (1997)).

Questions of statutory construction, including the meaning and scope of a statute, are questions of law, which this Court reviews de novo. *Id.* This Court also reviews the District Court’s interpretation of case law de novo. *See LVMPD v. Blackjack Bonding*, 343 P.3d 608, 612 (Nev. 2015). When the Legislature has addressed a matter with “imperfect clarity,” it becomes the responsibility of this Court to discern the law. *See Baron v. Dist. Ct.*, 95 Nev. 646, 648, 600 P.2d 1192, 1193–1194 (1979). Given an ambiguous statute, this Court must interpret the statute “in light of the policy and the spirit of the law, and the interpretation should avoid absurd results.” *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995).

III. LEGAL ARGUMENT

A. LVRJ LACKS STANDING TO ADDRESS THE DISTRICT COURT’S ORDER AND LVMPD’S ARGUMENTS CONCERNING THE BWC FOOTAGE.

LVRJ has no standing to raise arguments pertaining to LVMPD’s appeal on the BWC footage issues because its petition in the lower court does not seek access to BWC footage. 1 AA 000088-000126. Indeed, LVRJ did not make a request for BWC footage until months after it initially filed suit, and LVRJ never sought leave to amend its petition to include this request. As such, LVRJ is limited to addressing its own rights and does not have standing to assert arguments on behalf of the Media.

“Standing is a question of law reviewed de novo.” *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139, 1141 (2015). Under Nevada law, “a party generally has standing to assert only its own rights and cannot raise the claims of a third party.” *Beazer Homes Holding Corp. v. Eighth Jud. Dist. Ct.*, 128 Nev. 723, 730–731, 291 P.3d 128, 133 (2012). In the context of the NPRA, prior to seeking judicial intervention, a person or entity must make a request for a public record. NRS 239.0107. A requester can only seek judicial relief for access to the records if the government entity denied its request. NRS 239.011. In other words, a prerequisite to filing an application with a court for access to records is that the requester must first ask the government entity for a copy or for inspection of the same records.

LVRJ’s petition is devoid of any requests for BWC footage. 1 AA 000029–000055; 000088–000126. The only Parties that sought access to BWC footage were ABC (1 AA 000066–000068), CNN (1 AA 000071–000073); AP (1 AA 000079–000081), NYT (1 AA 000082–000083), and KTNV (1 AA 000084–000087). Because LVRJ never made a request for BWC footage, the District Court’s ruling on BWC footage has no effect on LVRJ. *See, e.g.*, NRAP 3A(a) (only aggrieved party has standing to appeal); *Estate of Hughes v. First Nat’l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980) (a party is aggrieved “when either a personal right or right of property is adversely and substantially affected”). Thus,

LVRJ's arguments concerning the BWC footage must be stricken and not considered by this Court because it has no standing to assert the rights of the Media in its Answering Brief. The Media is represented by separate counsel and has submitted its own Answering Brief. Therefore, LVRJ lacks standing to address any issues raised by LVMPD concerning the BWC footage.

B. LVMPD'S APPEAL IS NOT MOOT.

1. Legal Standard.

In Nevada, "[a] moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights." *NCAA v. Univ. of Nev.*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981). "Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events." *Id.* Even if this issue is now moot, the Court may still consider this case as a matter of widespread importance capable of repetition, yet evading review. *Bisch v. Las Vegas Metro Police Dep't*, 129 Nev. 328, 334, 302 P.3d 1108, 1113 (2013) (citation omitted). A case falls within the exception of the mootness doctrine if: (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important. *Id.*

2. LVMPD's BWC Footage Argument Falls Within the Exception of the Mootness Doctrine.

Without any authority in support of its position, LVRJ asserts that LVMPD's claim regarding BWC footage is moot. *See* LVRJ's Answering Brief
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and Opening Brief (“AB/OB”) at 25-27. Instead, LVRJ’s main point of contention is that LVMPD’s BWC footage arguments are moot because it has provided the records to the public at large rather than to only the Respondents. LVRJ’s logic is flawed for the several reasons outlined below.

First, LVRJ should be estopped from arguing that production of the BWC footage now moots LVMPD’s appeal given the fact that it represented both to the District Court and this Court that a stay in relation to production of records was not warranted as it would not affect the merits of LVMPD’s appeal. *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 8, 390 P.3d 646, 652 (2017) (judicial estoppel applies “when a party’s inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage.”) (citation omitted). To support its position that a stay was not warranted, LVRJ argued “[t]he object of [LVMPD’s] appeal will not be defeated if it has to comply with the Disclosure Order.” See LVRJ’s Response to LVMPD’s Emergency Motion for Stay filed on April 24, 2018, on file herein at pp. 14-15. In fact, LVRJ went so far as to expressly state that the “disputes between [LVRJ] and [LVMPD] are **not moot.**” *Id.* at n.22 (“The undersigned attests that the [LVRJ] and [LVMPD] have other ongoing disputes regarding the NPRA that relate to the legal issues in this case. Further, issues pertaining to the NPRA typically evade review—both due to the inability of requesters to litigate every public records dispute and the short

timeframe that most records are newsworthy.”). “[A] party who has stated an oath in a prior proceeding, as in a pleading, that a given fact is true may not be allowed to deny the same fact in a subsequent action.” *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 273, 44 P.3d 506, 514 (2002).

Yet, LVRJ now argues that LVMPD’s appeal is moot because it produced the records in accordance with the Disclosure Order. It appears that the heart of LVRJ’s mootness argument is that LVMPD produced the records to the public, rather than limiting the records to the Respondents. Again, this contention is irrelevant and has absolutely no bearing on the instant case. LVRJ failed to cite any findings from the lower court that LVMPD failed to comply with the Disclosure Order. More importantly, LVRJ’s argument would require LVMPD to violate the NPRA by not providing records to other requesters. To be sure, LVRJ refuses to recognize that several other media outlets made requests for records related to 1 October. LVRJ’s argument is also ironic considering that LVMPD provided LVRJ with BWC footage despite the fact that it did not make a request for BWC footage. After taking one position before this Court in relation to LVMPD’s request for stay, LVRJ cannot now take an opposite position to defeat LVMPD’s appeal.

Second, the fallacy in LVRJ's argument is that it ignores the fact that LVMPD redacted confidential information.² Thus, the information is not "in the public domain." AB/OB 25–27. In its Opening Brief, LVMPD asserts that the District Court erred in requiring production, rather than inspection in accordance with NRS 289.830, because the cost in review, redacting, and performing quality control related to the production of the redacted BWC footage was significant and unduly burdensome. This is especially true in light of the fact that the District Court erroneously prohibited LVMPD from charging for review, redaction, quality control, and production of the BWC footage.

Nevertheless, this Court must conclude that LVMPD's BWC footage arguments fall within the exception to the mootness doctrine because it involves a short timeframe, is likely to appear again, and is an important matter. *Bisch*, 129 Nev. at 335, 302 P.3d at 1113.

a. The timeframe is relatively short.

Unlike a typical civil litigation matter, this matter is subject to the NPRA and only permits the requester to seek a court order for disclosure of records. NRS 239.011. This action was initially filed in November 2017 and, after the District Court ordered production, LVMPD filed its Notice of Appeal in March

² Indeed, one of LVRJ's issues it raises in its cross-appeal is that the redaction permitted by the Court was overly broad.

2018. After LVMPD's motion for stay was denied, LVMPD began producing records in accordance with the Disclosure Order. It took a team of LVMPD employees approximately eight months to produce all BWC footage. As such, the timeframe of the proceeding itself and production were relatively short.

b. Aa similar issue will likely arise in the future.

By LVRJ's own admission in its opposition to LVMPD's request for stay, this element is met. LVRJ and LVMPD have other ongoing disputes regarding public records. Furthermore, the district courts need clarification on this topic so that the district courts may consistently and correctly apply the law. *See Wheble v. Eighth Judicial Dist. Court*, 128 Nev. 119, 122, 272 P.3d 134, 136 (2012) (entertaining writ petition when there was the potential for district courts to inconsistently interpret a legal issue). Specifically, district courts need guidance on whether NRS 289.830 permits inspection of BWC footage, rather than disclosure, when redactions are extremely burdensome and expensive.

c. Disclosure and inspection of BWC footage is a matter of public importance.

The public's access to BWC footage is a matter of public importance. The Legislature expressly deemed BWC footage a public record. NRS 289.830. Accordingly, the purpose and policy of the NPRA supports LVMPD's argument that disclosure and inspection of BWC footage is a matter of public importance.

See NRS 239.010(1). For these reasons, LVMPD's BWC footage arguments fall within the exception to the mootness doctrine.

3. **LVMPD's Extraordinary Use Argument Regarding Fees is Not Moot.**

LVRJ argues that LVMPD's extraordinary use argument is moot because it failed to comply with the Disclosure Order. Again, LVRJ cannot direct this Court to anywhere in the record where the lower court made a finding that LVMPD has failed to comply with its orders. LVMPD's appeal, in part, is based on the fact that the District Court erred in interpreting NRS 239.055 to specifically exclude electronic records and prohibit LVMPD from recovering staff time in relation to production. See LVMPD's Opening Brief ("OB"), *generally*. The only way that LVMPD's argument regarding the extraordinary use provision would be moot is if the Respondents paid the costs LVMPD seeks to impose. Therefore, LVMPD's appeal regarding the District Court's interpretation of NRS 239.055 is a live controversy for this Court. Should this Court be inclined to entertain LVRJ's mootness argument, LVMPD's appeal concerning NRS 239.055 falls within the exception of the mootness doctrine for the same reasons discussed above.

C. THE DISTRICT COURT ERRED WHEN IT REQUIRED PRODUCTION, RATHER THAN INSPECTION, OF BWC FOOTAGE.

1. LVRJ has Waived any Arguments Relating to BWC Footage.

LVRJ is prohibited from making arguments as to any appeal issues pertaining to the BWC footage since its request was made after the instant proceeding and never included as part of the lawsuit. Regardless, LVMPD complied with the Disclosure Order and asks that this Court determine that the District Court erred when it ordered production of BWC footage,

LVRJ directs this Court to the Disclosure Order that orders the Parties to meet and confer to resolve any issues about “redactions that may not be practicable.” AB/OB 31; 7 AA 000132. First, LVMPD did meet and confer with the Parties that requested BWC footage. Reply Appendix (“RA”) 001394-001396. It was the Media that refused to inspect the records because their representatives were located across the United States, making it difficult for them to inspect records. *See* Media’s Answering Brief (“AB”) 15; 1 RA 35, 177. Thus, LVMPD met its obligations to meet and confer. But, because the District Court did not order inspection, LVMPD could not withhold the BWC footage from disclosure and require the Respondents to inspect the records. If it did, it would be in contempt of the Disclosure Order.

LVRJ takes the position that LVMPD should have sought a protective order for the BWC footage. This position is entirely inconsistent with LVMPD's arguments. LVMPD asked that the District Court order inspection of the BWC footage because of the time and effort the redactions required. Seeking a protective order would not have furthered LVMPD's interest. Moreover, nothing in the Disclosure Order required LVMPD to file a protective order. The only requirement the District Court ordered was that the Parties meet and confer, which LVMPD complied with.

2. **NRS 289.830 Permits Inspection When Redactions Are Not Feasible, and Inspection is Permitted by the NPRA.**

“[A]mbiguity is not always a prerequisite to extrinsic aids.” *A.J. v. Eighth Jud. Dist. Ct.*, 394 P.3d 1209, 1213 (2017) (citing 2A Norman J. Singer & Shambie Singer, STATUTES AND STATUTORY CONSTRUCTION, § 48:1, at 554 (7th ed. 2014)). In instances where the plain meaning rule would thwart or distort the intent of the Legislature, this Court may evaluate the Legislature's intent by examining enlightening material from the legislative history. *Id.* The legislative history of NRS 289.830 guides this Court on the Legislature's intent of requiring inspection of BWC footage when it “may not otherwise be redacted.”

The Media argues that NRS 289.830 is applicable in situations where redaction of the confidential information would result in the entire video being

blank. AB 11–12. In such instances, the BWC footage would be rendered confidential in its entirety and not subject to the NPRA, neither through disclosure nor inspection. During the legislative session, Chuck Calloway explained that videos can be redacted, but the “[t]echnology is not there 100 percent for redaction.” Hearing on AB 162 Before the Assembly Committee on Government Affairs, 78 Leg. (Nev. Mar. 9, 2015). Mr. Calloway gave the following example:

For instance, redacting someone’s face from a video in the current TASER technology would require you to go frame by frame. If you have a three-minute video, there are hundreds of frames per second. You can imagine how long it would take someone to go through that video and redact someone’s face from each particular frame of that video.

What we suggest in those cases ***when the video contains sensitive material is that there is an inspection clause***, where someone—the victim, the attorney, or the media—could come in and inspect the video, but we would not release the video to them.

Id. This was the exact argument LVMPD made to the lower court. Regardless, the District Court ordered LVMPD to produce the BWC footage. The factors that must be considered on whether or not redaction is practicable and feasible are the cost and time required to produce BWC footage. In addition, the Court should also consider the effect the video footage has on the victims.³ Many news outlets were

³ See Las Vegas shooting: One year later, hundreds of videos traumatize some survivors. <https://www.cbsnews.com/news/las-vegas-shooting-one-year-later-hundreds-of-online-videos-traumatize-survivors/>

prohibited from playing the videos on air because of their graphic nature. The news agencies then reported to viewers what they had reviewed and could not show on television. The same result could have been achieved by inspection at less cost. That was the intent of the inspection clause within NRS 289.830.

LVRJ improperly presumes that LVMPD sought to “withhold the BWC footage” in its entirety. AB/OB 36. This is simply not true. The Disclosure Order required LVMPD to redact any images identifying individuals, including images of those injured and deceased. The purpose of the redactions was so that this information would not be open to the public eye and further traumatize the victims and their families. *See March v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012) (recognizing a common law right to non-interference with a family’s remembrance of a decedent); *Nat’l Archives and Records Admin. v. Favish*, 541 U.S. 157, 168 (2004) (“Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.”).

The NPRA itself recognizes that inspection promotes public access to records. NRS 239.011 permits a court to enter an order permitting a requester to either inspect or receive a copy of the record. At a minimum, the District Court should have balanced the interests of the Parties and determined that inspection

would still promote public access while not requiring LVMPD to expend nearly \$1 million in costs. *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). Therefore, this Court should conclude that the District Court erred when it required LVMPD to review, redact, and produce 748 hours of BWC footage when the intent of NRS 289.830 was to require inspection of video containing sensitive information that would be too burdensome to redact.

D. LVRJ'S CONSTITUTIONAL RIGHTS WOULD NOT BE VIOLATED BY PAYING LVMPD FOR THE COST OF PRODUCTION.

1. The Liberal Application of the NPRA Supports Public Access to Records.

The purpose and policy of the NPRA would be defeated if access to public records were limited to requesters who are parties to a public records lawsuit. “[T]he construction of a statute is a question of law.” *Edgington v. Edgington*, 119 Nev. 577, 582, 80 P.3d 1282, 1286 (2003) (citation omitted). “In interpreting a statute, ‘words...should be given their plain meaning unless this violates the spirit of the act.’” *Id.* (citation omitted). “Thus, when a statute’s language is clear and unambiguous, the apparent intent must be given effect, as there is no room for construction.” *Id.* at 582-83 (citations omitted). The court must interpret a statute in a reasonable manner, that is, the words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd

results. *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502 (2009). Provisions within a statute must be construed as a whole and interpreted harmoniously with one another. *Mardian v. Greenberg Family Trust*, 131 Nev. Adv. Op. 72, 359 P.3d 109, 111 (2015).

When the language of a statute is clear and unambiguous, courts are prohibited from adding things to what a statutory text states or reasonably implies. *Douglas v. State*, 130 Nev. Adv. Op. 31, 327 P.3d 492, 498 (2014) (declining to presume that the Legislature intended to include mutual consent as an element of a crime); see also *State Indus. Ins. System v. Bokelman*, 113 Nev. 1116, 1122, 946 P.2d 179, 183 (1997) (holding that “[w]here the language of the statute is plain and unambiguous...a court should not add to or alter the language to accomplish a purpose not on the face of the statute.”). But “[w]hen a statute...does not address the issue at hand,” we “look to reason and public policy to determine what the Legislature intended.” *Pub. Emps.’ Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 147, 179 P.3d 542, 548 (2008).

The purpose of the NPRA is to foster democratic principles by providing members of the *public* with access to inspect and copy public books and records to the extent permitted by law. NRS 239.001(1) (emphasis added). The provisions of the NPRA must be construed liberally to carry out this important purpose. NRS 239.001(2). The NPRA allows a requester to seek judicial intervention upon

a denial of access to a public record by a governmental entity. The Court may enter an order permitting the requester to inspect the record or requiring the governmental entity to provide a copy of the record. NRS 239.011(1).

LVRJ is essentially asking this Court to read language into the statute, including the qualifiers “first” and “only,” so that it may obtain exclusivity of records deemed to be public. This Court must read the statutory scheme of the NPRA as a whole and consider its underlying principles and purpose, without reading additional language into the statute. Furthermore, the NPRA requires the court to liberally construe the statute. LVRJ relies on the provision that permits a requester to seek judicial intervention and a court order requiring the governmental entity to provide a copy to the requester to prove its point. Yet, there is no language to support LVRJ’s theory that *only* requesters who file lawsuits are entitled to receive access to public records within the statute. Furthermore, there is no language within the statutory scheme that *prohibits* LVMPD from providing the public with access to such records when an application to the court has been made. Indeed, the entire purpose of the NPRA is to provide the *public* with access to public records. A ruling limiting access to public records to only the requester that files a lawsuit would be entirely inconsistent with the NPRA.

2. LVRJ's Constitutional Rights are not at Issue.

First and foremost, LVRJ's allegations that LVMPD's public records production amounts to a constitutional violation must be asserted in a separate lawsuit and not as part of this Appeal. Nevertheless, providing public access to public records does not amount to a constitutional violation.

a. There is No First Amendment Retaliation.

It is well established that the First Amendment protects the right to use public records to inform the public about the administration of its government. *See Firearms Policy Coalition Second Amendment Defense Committee v. Harris*, 192 F.Supp.3d 1120, 1125 (E.D. Ca. 2016). Neither the parties to litigation nor the Court can contractually agree to deprive the public of its strong First Amendment interest in accessing public records. *See Mendez v. City of Gardena*, 222 F. Supp.3d 782, 791-92 (C.D. Ca. 2015).

“De minimis deprivations of benefits and privileges on account of one’s speech do not give rise to a First Amendment claim. Rather, for adverse, retaliatory actions to offend the First Amendment, they must be of a nature that would stifle someone from speaking out.” *Blair v. Bethel School Dist.*, 608 F.3d 540, 544 (9th Cir. 2010). The most familiar adverse actions are “exercise[s] of governmental power” that are “regulatory, proscriptive, or compulsory in nature” and have the effect of punishing someone for his or her speech. *Laird v. Tatum*,

408 U.S. 1, 11 (1972). By way of example, the *Tatum* court cited to cases involving restraints on the right to practice law, loss of employment, criminal sanctions, and criminal prosecutions. *Id.*

Dissemination of information is speech within the meaning of the First Amendment. See *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 570 (2011). Retaliation claims involving government speech warrant a cautious approach by courts. *Mulligan v. Nichols*, 835 F.3d 983, 989 (9th Cir. 2016). Restricting the ability of government decision-makers to engage in speech risks interfering with their ability to effectively perform their duties. *Id.* It also ignores the competing First Amendment rights of the officials themselves. *Id.* The First Amendment is intended to “preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.” *McCullen v. Coakley*, 134 S.Ct. 2518, 2529 (2014) (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984)). That marketplace of ideas is undermined if public officials are prevented from responding to speech of citizens with speech of their own. See *Bond v. Floyd*, 385 U.S. 116, 136 (1966) (“The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators.”).

LVRJ has not demonstrated that LVMPD has taken some adverse action. On one hand, LVRJ claims that being held responsible for the payment of

production is “patent retaliation.” Notably, the NPRA permits LVMPD to charge requesters for the production of records. NRS 239.052 and NRS 239.055. Moreover, the District Court issued an Order determining Respondents were responsible for costs associated with production. 7 AA 0001323–001331. On the other hand, LVRJ asserts LVMPD has taken an adverse action against LVRJ by making the public records available to the general public. Again, the District Court specifically deemed the requested records public. It appears that the “adverse actions” LVRJ complains of have been ordered by the lower court and, more importantly, constitutes speech that is protected by the First Amendment. Thus, LVMPD has not taken adverse action against LVRJ as it has simply complied with the District Court’s Orders.

b. LVMPD’s Compliance with the Order Does Not Violate Equal Protection.

The U.S. Supreme Court has recognized successful equal protection claims brought by a “class of one,” where the plaintiff alleged that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). LVRJ maintains that LVMPD’s “intent to charge” LVRJ and not other media agencies is a violation of its right to Equal Protection under the law. LVRJ blatantly ignores the fact that it was ordered by the Court to pay for

the costs associated with production. This is not a case where LVMPD is simply picking and choosing who should pay for records and who should not. Furthermore, LVRJ has not demonstrated it has been intentionally treated differently from others *similarly situated*. LVRJ equates itself to other news outlets that are receiving records at no cost. In the same paragraph, however, LVRJ differentiates itself from those news outlets because it sought judicial intervention. As such, LVRJ is not similarly situated to the other media outlets because it is subject to the District Court's jurisdiction and Cost Order.

E. NRS 239.055 PERMITS LVMPD TO IMPOSE AND COLLECT FEES FOR EXTRAORDINARY USE.

1. The District Court Properly Determined that this Case Requires Extraordinary Use.

LVRJ improperly claims that LVMPD has not established that this case involves extraordinary use. AB/OB 54–55. In its Opening Brief, LVMPD asserted that the District Court properly found that the instant case involved extraordinary use. OB 24. The Respondents did not cross-appeal the issue of whether the District Court abused its discretion in making this specific finding. Indeed, the District Court expressly found:

[T]he Media's request here **does indeed require Metro to incur extraordinary use of staff time**, thereby implementing the "50 cent" rule for documents. Petitioner has requested a massive amount of documents and information. Petitioner has requested several different categories of documents. Petitioners' request will **require several**

Metro officers, technological personnel, equipment and supervisors. Petitioners' request will require Metro to conduct extensive redactions of confidential and private data. Petitioners' request will require an effort by Metro over a period of at least six (6) months. Finally, Petitioners' request might interfere with Metro's ability to protect the health, welfare, and safety of the public. For all these reasons, the Court finds that the Media's request will involve "extraordinary use," and triggers the 50 cents per page additional allowance.

7 AA 001328 (emphasis added). As such, LVRJ is prohibited from arguing that this case does not involve extraordinary use as it did not cross-appeal that specific issue.

2. LVMPD has not Waived its Right to Seek Fees for Extraordinary Use.

Once more, the Respondents ask this Court to find LVMPD has waived its ability to assert its right to impose fees if production necessitates extraordinary use of personnel or technological resources, which is expressly permitted by the NPRA. NRS 239.055. Nevertheless, the NPRA permits LVMPD to voluntarily waive fees. NRS 239.052. Here, the District Court expressly concluded that production of the requested records would require extraordinary use of personnel and technological resources. On appeal, LVMPD seeks to recover fees related to the production of BWC footage. Obviously, LVMPD has not waived its right to seek costs for producing records, and this Court cannot conclude otherwise.

Respondents contend that, despite the District Court's ruling that production of the records would require LVMPD to expend extraordinary use of its personnel and technological resources, LMVPD is not entitled to recover such fees because LVMPD allegedly did not provide an estimate of the costs to Respondents. NRS 239.055 requires the government entity provide the requester with an estimate of the cost if extraordinary use is necessary. Respondents have willfully ignored LVMPD's supplemental brief on costs which was provided to Respondents, in writing, and included an estimate of the costs LVMPD anticipated incurring. 6 AA 001013–001309. Thus, LVMPD met the requirements set forth in NRS 239.055.

Respondents also contend that LVMPD waived its ability to recover its fees because it provided records to the public, failing to comply with the Disclosure Order. Respondents have failed to cite to the specific portions of the record that shows LVMPD did not comply with the Disclosure Order. There is no finding from the lower court that LVMPD failed to comply with the Disclosure Order, and this Court cannot make such a ruling. *Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC*, 126 Nev. 97, 226 P.3d 605 (2010) (Appellate courts normally will not decide an issue not litigated in the trial court); *Wynn Resorts, Limited v. Eighth Judicial District Court*, 399 P.3d 334, 340 n.3 (2017) (declining to consider additional arguments that were not ruled on by the district court).

Because there is no finding from the lower court that LVMPD failed to comply with the Disclosure Order by providing the public with access to records, this Court cannot render an opinion on the same.

Regardless, it is quite telling that on one hand the Respondents argue that the records sought are “public records” and, on the other hand, chastise LVMPD for providing the public with access to such records. Despite arguing that the “public” has a right to these records, it appears that Respondents would have such records only limited to them. This reasoning is entirely inconsistent with the NPRA. The NPRA requires the government entity to produce public records in its possession upon request. NRS 239.0107. As such, LVMPD was required to produce the records in its possession after the District Court deemed the records sought as “public records.” It seems that Respondents would like LVMPD to violate the NPRA as to all other requests it received after the District Court’s Order and subject LVMPD to additional litigation.⁴

LVRJ raises an additional argument that any complaint for the costs associated with the production of the BWC footage was of LVMPD’s own making because the Respondents offered to narrow their requests. This argument ignores the very fact that the Respondents sought access to ***all*** records, and the District

⁴ If the Court were to adopt LVRJ’s position in this respect, it would effectively turn public records into quasi-private records only available to a requester.

Court required production of **all** records. It was not until after the District Court determined that extraordinary use fees were warranted that Respondents wanted to limit their requests. LVMPD is obligated to abide by the District Court's Order. The time for Respondents to attempt to amend or modify their requests was prior to filing a lawsuit, not after obtaining a Court Order. *Vietnam Veterans of Am. Conn. Greater Hartford Chapter 120 v. Dep't of Homeland Sec.*, 8 F.Supp.3d 188, 203 (D. Conn. 2014) (nothing requires a court to allow modifications to a FOIA request during the course of litigation) (citation omitted). Surely, the Disclosure Order would be used as a carrot to dangle in front of LVMPD by Respondents, threatening Court action if LVMPD did not follow Respondents' directions.

Finally, the Media relies on the last sentence of NRS 239.055 in support of waiver. Specifically, NRS 239.055 provides that a government entity "shall not charge such a fee if the governmental entity is not required to make extraordinary use of its personnel or technological resources to fulfill additional requests for the same information." In other words, once a government entity has already expended extraordinary use to compile public records, it cannot pass that cost on to additional requesters for the same records. This provision permits LVMPD to charge the Respondents for access to the records, but not subsequent or additional requesters, since LVMPD was required to expend extraordinary use to produce the records in order to comply with the Disclosure Order.

The legislative history follows this interpretation. Mr. Erquiaga testified that under NRS 239.055, the cost could only be recovered once. 6 AA 001097 (explaining that a government agency would be prohibited from charging the same price for extraordinary use of personnel or technological resources if the request sought duplicative information that did not require the same extraordinary use). Additional requesters seeking the same information would only pay the actual cost, such as the cost of the medium. *Id.* This reasoning supports LVMPD's interpretation and, logistically, makes sense because the government entity only has to expend the extraordinary use once. In reality, NRS 239.055 supports LVMPD's position that it is entitled to charge Respondents, and not all media agencies that submitted public record requests after the disclosure order was issued.

3. NRS 239.055 Requires Staff Time to Be Reasonable and Actually Incurred.

LVRJ claims that LVMPD cannot recover for extraordinary use because it does not seek to impose the "actual costs." It appears that LVRJ has either misinterpreted, or blatantly ignored, the plain language of NRS 239.055. First, NRS 239.052, not NRS 239.055, uses the term "actual cost" as defined by NRS 239.005. Thus, the production of public records *not* requiring extraordinary use is limited to actual costs as defined in NRS 239.005. Conversely,

NRS 239.055 permits an ***additional fee*** when extraordinary use of personnel is required. NRS 239.055 does not include the term “actual cost,” but provides that “[t]he fee charged by the governmental entity must be reasonable and must be based on the cost that the governmental entity actually incurs for the extraordinary use of its personnel or technological resources.” NRS 239.055; 6 AA 001096–001097 (recognizing the difference between “actual cost” and “additional fee”). The only logical conclusion that can be reached from the language “actually incurs for the extraordinary use of its personnel” is that the government entity may charge for the staff time utilized when extraordinary use is required.

As LVMPD indicated in its Opening Brief, the staff time charged must be reasonable and actually incurred. OB 30. LVMPD is permitted to charge the hourly rate of the employee that expends extraordinary use in preparing the records for production. It is the Respondents’ position that the hourly rate of government employees is incurred regardless of public records requests. The Respondents ignore the fact that staff preparing the records for production are no longer performing their core duties and job functions, such as fighting crime. The production of records in this case required LVMPD to reassign 10 detectives and 1 Sergeant from the streets to a room to review, redact, and produce records. LVMPD has incurred nearly \$1 Million in producing BWC footage alone. While the Respondents’ charge the public for records they received at absolutely no cost,

taxpayers are footing the bill for officers to be taken off the streets to produce records.

The purpose and function of the NPRA is to promote transparency. The NPRA should not displace the core function of the government. In instances that require LVMPD or any other government agency to expend extraordinary use of personnel, it should be permitted to charge for staff time utilized in producing the requested records.

4. The NPRA Requires Redaction of Confidential Information.

LVRJ characterizes redaction of confidential information, and any charges related thereto, as LVMPD charging for a privilege review. Arguing that such conduct is inconsistent with the NPRA, LVRJ cites to NRS 239.0107 (requiring the government entity to assert a privilege prior to production), NRS 239.0113(2) (the government bears the burden that the record is confidential), and NRS 239.001(2) (the NPRA must be interpreted liberally and not to restrict access to records). LVRJ's arguments fail to address the central issue—the redaction of confidential information within a record that must be produced. Moreover, the District Court expressly found that extraordinary use included staff time to conduct redactions. 7 AA 001328.

None of the statutes recited in LVRJ's arguments pertain to redactions. Indeed, LVRJ failed to address the applicability of the statute directly on point,

NRS 239.010(3), which requires the government entity to redact confidential information from a record. LVMPD recognizes that it must produce the public record where such confidential information may be redacted. NRS 239.010(3). Thus, if a request seeks records that necessitate redactions and extraordinary use of personnel, permitting the government entity to charge a fee does not run afoul of the letter and purpose of the NPRA. To the contrary, fees related to redaction are consistent with a government entity's obligations under the NPRA. The District Court specifically found that LVMPD could charge for redactions under the extraordinary use provision. 7 AA 001328. Thus, the only issues left for this Court to decide are whether NRS 239.055 permits LVMPD to charge for staff time and whether NRS 239.055 encompasses electronic records.

5. The Legislative History Contemplates a Government Entity Charging for Staff Time When Extraordinary Use is Required.

“[A]mbiguity is not always a prerequisite to extrinsic aids.” *A.J.*, 394 P.3d at 1213 (citing 2A STATUTES AND STATUTORY CONSTRUCTION, § 48:1, at 554). In instances where the plain meaning rule would thwart or distort the intent of the Legislature, this Court may evaluate the Legislature's intent by examining enlightening material from the legislative history. *Id.* The legislative history of NRS 239.052 and NRS 239.055 sheds light on the Legislature's intent of the fee a government agency may impose on a requester for copies of public records.

In 1997, the NPRA underwent its first major overhaul. Assembly Bill 214 (“AB 214”) was specifically crafted to address the fee provisions—codified at NRS 239.052 and NRS 239.055. 6 AA 001031–001125. AB 214 was first introduced to the Assembly Committee on Government Affairs by Chief Deputy, Secretary of State, Dale Erquiaga. *Id.* at 001033. Addressing the definition of actual costs, Mr. Erquiaga explained that it meant if an employer had a lease and a maintenance agreement on a copier, the employee who ran the copier could not charge those costs through on the record, as the employer would always pay the lease and maintenance agreement to make his own operating copies. *Id.* at 001043. Thus, it was always intended that “actual costs,” as defined in NRS 239.005, meant paper, toner, discs, and so forth. *Id.*

Mr. Erquiaga further clarified the extraordinary personnel exception within AB 214 at the hearing:

[I]f a person came into the Secretary of State’s office and wanted a list of all corporations which had filed pursuant to Nevada Revised Statutes (NRS), Chapter 82, a program would have to be written to pull the information out of the database—which was extraordinary use of that office’s technology.

Id. On May 28, 1997, Mr. Erquiaga reiterated to the Senate Committee on Government Affairs that the language “actual cost” in NRS 239.052(1) does not include costs an entity already incurs such as personnel or a lease on the machine. *Id.* at 001096. However, AB 214, section 3 (codified at NRS 239.055), established

an exception when extraordinary use of personnel was required. *Id.* at 001097. The purpose behind this section was to recover government costs. At the same hearing, Alan Glover, Clerk/Recorder for Carson City, expressed concern about a high demand for public records, especially in relation to groups harassing staff in the recorder's offices by asking for exorbitant amounts of records, thereby tying up the government. *Id.* at 001099. In response, Kent Lauer, Lobbyist for Nevada Press Association, assured the Committee that the extraordinary use of personnel section would address Glover's concern of low fees in his scenario. *Id.* at 001103.

Due to the discrepancy of copy costs across government agencies, Senator Tick Segerblom proposed Senate Bill 74 ("SB 74") to limit an agency's copy cost to 50 cents, but permitted an additional fee when extraordinary use of personnel or technological resources occurred. During an Assembly Committee hearing, Senator Segerblom and his intern, Taylor McCadney, were asked several questions regarding whether additional charges, such as postage and staff time, were prohibited as a result of the 50-cent per page limitation. 7 AA 001244-001277. Throughout the hearing, both Senator Segerblom and McCadney clarified that the 50-cent fee limitation strictly applied to copying charges, and the purpose of NRS 239.055 was to allow leeway if additional cost was incurred as a result of the extraordinary use of personnel. *Id.* In particular, McCadney gave the following testimony:

Taylor McCadney: Assemblyman Daly, the section that you are talking about is section 4, subsection 1, where it states, “Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public record. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific statute or regulation sets a fee....” In section 4.5, it also goes into detail about how they can charge extra for extraordinary use of technology or manpower. That is where the leeway comes from for them to charge more than the actual cost of a copy.

Assemblyman Daly: We knew it was a lot of paper and they charged us a fair price based on their costs. They did include staff time and various things....

Id. at 001267. The legislative history evidences the Legislature’s intent to distinguish between the 50-cent copy limitation and fees for extraordinary use of personnel and technological resources. The NPRA explicitly permits an agency to charge for costs it actually incurs in producing public records, including redacting confidential information if redactions would require an agency to expend extraordinary use of its personnel. *See* NRS 239.055(1). Part of the government’s responsibility in producing records is to redact confidential information not subject to disclosure. *See* NRS 239.010(3). It necessarily follows that a government entity redacting confidential information from records and providing the requester with portions of the record that are not otherwise confidential comports with the NPRA and does not promote secrecy.

This Court has indicated previously that the cost to a government agency, including staff time, may be recovered pursuant to NRS 239.052 and NRS 239.055. *See Blackjack Bonding*, 343 P.3d at 614 (determining that the district court mitigated any burden associated with the request by requiring Blackjack to pay the costs associated with the production of the requested documents); *Public Employee's Retirement System of Nevada v. Nevada Policy Research Institute, Inc.*, 134 Nev. Adv. Op. No. 81, at *16 (Oct. 18, 2018) (“PERS cannot evade disclosure on the basis that satisfying NPRI’s public record request would require additional staff time and cost because PERS could charge NPRI for such an incurred fee.”).

In instances where producing records will require the extraordinary use of personnel to comply with disclosure and the NPRA, a government agency is permitted to charge the requester a reasonable fee for the staff time that the agency actually incurs in responding to a request, including redaction of confidential information from public records as required by NRS 239.010(3).

6. NRS 239.055 Applies to Electronic Records.

The District Court’s interpretation of limiting the extraordinary use fee provision to 50-cents and determining that electronic records are not subject to the extraordinary use provision cannot be reconciled with the legislative history.

LVRJ cites NRS 239.053 in support of its position that the NPRA differentiates between electronic and printed records. AB/OB 51–54. NRS 239.053 is inapplicable here as it only applies to transcripts of administrative proceedings. Nonetheless, NRS 239.053, like NRS 239.055, does not differentiate between electronic and paper copy records. LVRJ focuses on the fact that NRS 239.053 permits the agency to charge for the cost of the medium and a per page fee. AB/OB 52–53. The same result is reached by interpreting NRS 239.052 and NRS 239.055 together. NRS 239.055 is an *additional fee* to any fees permitted by NRS 239.052. In fact, the District Court determined that LVMPD could charge for the cost of the medium pursuant to NRS 239.052. Thus, LVRJ’s analysis of NRS 239.053 provides no guidance on whether or not NRS 239.055 also applies to electronic records.

The Media contends that this Court cannot add language into the statute, i.e., “electronic records.” AB 20–21. The District Court ruled that NRS 239.055 precludes LVMPD from charging the Respondents for electronic records. Yet, the language codified within NRS 239.055 says no such thing. Instead, NRS 239.055 limits a government entity to charging 50-cent per page when productions of records require copying. Thus, the Media’s logic and argument support’s LVMPD’s position—nothing in the statute prohibits LVMPD from imposing a fee for producing electronic records.

As initially enacted, the Legislature indicated that the entire purpose of NRS 239.055 was to address the issue of “electronic records or the use of staff time to compile records.” 6 AA 001043. Additionally, under NRS 239.055 a government entity could charge for creating a program in order to produce responsive records. *Id.* In particular, Mr. Erquiaga testified that in instances where a program would have to be written to pull the information out of the database that would constitute extraordinary use of that office’s technology and the agency could charge an additional fee. *Id.* If this Court were to follow both the District Court and Respondents’ interpretation of NRS 239.055, a government entity would be prohibited from imposing a fee for the creation of a program because it is not a document that is capable of “being printed out on a page-by-page basis.” 7 AA 001350. Interestingly, the Respondents’ failed to address the term “technological resources” in their briefs. The inclusion of the term “technological resources” demonstrates that fees for extraordinary use is not limited to copies of documents. Rather, it is the 50-cent fee limitation that applies to only copies of documents. Therefore, this Court should conclude that NRS 239.055 is not limited to paper records and includes electronic records.

**F. PRODUCTION OF RECORDS INVOLVING
EXTRAORDINARY USE REQUIRES THE REQUESTER TO
PAY THE ESTIMATED FEE IN ADVANCE.**

Government entities can require payment in advance when production of records requires extraordinary use pursuant to NRS 239.055. Prior to production, the agency must inform the requester of an estimate of the cost. NRS 239.055. This provision would be rendered meaningless if the agency could not require costs to be paid in advance. *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (concluding that statutory interpretation should not render any part of a statute meaningless, and a statute's language should not be read to produce absurd or unreasonable results) (citation omitted) (internal quotations omitted).

Respondents argue that paying the extraordinary use fee upfront hinders a requester's access to records. Even without payment in advance, an agency could refuse to disclose records until payment was made. The issue with that approach is that the requesters could refuse to collect the records. In those instances, the agency is left wasting government resources with no mechanism to collect the extraordinary use fees to which it is entitled under NRS 239.055.

The purpose of the estimate is to "quote" the requester before the work is performed. The quote serves no purpose if there is no guarantee that the requester will pay *after* the work is performed, which happens all too often with public records requests. *Chanos*, 125 Nev. at 508 (the court must interpret a statute in a

reasonable manner, that is, the words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd results). One would assume that if the requester refuses to pay the government entity for the records, it would initially object when it is informed of the additional fee. The statute, however, does not require the requester to inform the agency of its intent to pay or obtain the records. Advance payment resolves this issue and ensures that the government entity will be paid for the costs actually incurred. It also holds the requester accountable for collecting records. Surely, if the requester is required to pay for the records ahead of time, the requester will be incentivized to collect the records.

While LVMPD has the ability to enforce an order in this case, when there is no litigation, LVMPD has no mechanism to collect from the requester. In situations where the requester refuses to collect the records and LVMPD already expended the work to produce the records, it would be unable to collect any monies actually incurred and owed in accordance with NRS 239.055.

The purpose and policy behind the government entity providing the requester with a quote prior to preparing the information is to ensure the requester is aware of and willing to pay the quoted fee. Thus, payment prior to production is necessary to ensure that the requester collects the records and the government entity receives its fees for extraordinary use. As such, this Court should determine

the District Court erred when it did not require Respondents to pay the estimated costs upfront.

G. THE DISTRICT COURT PROPERLY CONCLUDED THAT LVMPD DID NOT WAIVE ITS ABILITY TO ASSERT PRIVILEGES.

1. The NPRA is Silent on Waiver, and LVRJ's Remedy is to Seek Relief from the Court.

It is LVRJ's position that LVMPD did not timely provide a response to LVRJ's public records request and, therefore, waived any right to assert privileges or confidential status of documents. In the context of the NPRA, LVMPD did not intentionally relinquish a known right, which is the definition of "waiver." See *Nevada Yellow Cab Corp. v. Dist. Ct.*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007). The District Court properly found that LVMPD did not waive its ability to assert privileges. 7 AA 001318.

As a matter of law, LVRJ's remedy for its refusal to accept LVMPD's position was to apply to the District Court for relief. NRS 239.011. Notably, nothing within NRS 239.0107 or NRS 239.011 suggests that waiver is a remedy. Thus, the District Court properly declined to read an additional remedy of waiver into the NPRA. See *Builders Ass'n of Northern Nevada v. City of Reno*, 105 Nev. 368, 370, 776 P.2d 1234, 1235 (1989) ("If a statute expressly provides a remedy, courts should be cautious in reading other remedies into the statute."); *Stockmeier*

v. Nev. Dep't of Corrections Psychological Review Panel, 124 Nev. 313, 317, 183 P.3d 133, 136 (2008) (“declin[ing] to engraft any additional remedies therein.”). This Court has previously established that “[w]here a statute gives a new right and prescribes a particular remedy, such remedy must be strictly pursued, and is exclusive of any other.” *State v. Yellow Jacket Silver Min. Co.*, 14 Nev. 220, 225 (1879).

There is no provision for “waiver” in the NPRA, except in NRS 239.052, where it states that the public entity may waive a fee, and NRS 239.170, involving lost or destroyed records. LVRJ contends that NRS 239.0107(d) requires strict compliance. AB/OB 58–60. But, LVRJ cannot point to any waiver language within this statute. The cases upon which LVRJ relies do not discuss waiver of statutory privileges. *Id.* “[I]n determining whether strict or substantial compliance is required, courts examine the statute’s provisions, as well as policy and equity considerations.” *Leven*, 123 Nev. at 406–407, 168 P.3d at 717 (citing 3 Norman J. Singer, *STATUTES AND STATUTORY CONSTRUCTION*, § 57:19, at 58 (6th ed. 2001)). Generally, statutes creating time or manner restrictions are construed as mandatory. *Id.* On the other hand, statutes are directory (i.e., advisory) if they require performance within a reasonable time or if substantial compliance is sufficient. *See Village League to Save Incline Assets, Inc. v. State ex rel. Bd. of Equalization*, 124 Nev. 1079, 1087, 194 P.3d 1254, 1259 (2008). A statute should

not be deemed mandatory if it appears to have been prescribed simply as a matter of form. *See Corbett v. Bradley*, 7 Nev. 106, 108 (1871). Furthermore, this Court may construe a statute as directory to avoid “harsh, unfair, or absurd consequences.” *Village League*, 124 Nev. at 1088, 194 P.3d at 1260–1261 (citing *Leven*, 123 Nev. at 407, 168 P.3d at 717).

Nevertheless, should this Court determine that NRS 239.0107 requires strict compliance, the remedy available to address any deficiencies in a response provided pursuant to NRS 239.0107 is judicial relief in accordance with NRS 239.011—not waiver. To be sure, earlier this year, this Court rejected a similar waiver argument. *See Katz v. Incline Village Gen. Improv. Dist.*, Dkt. No. 70440, at *8–9 (Feb. 26, 2018) (unpublished). In *Katz*, the plaintiff challenged the district court’s conclusion that the defendant did not violate the NPRA. *Id.* The defendant had denied plaintiff’s public record requests on the basis that the records requested were not public records. *Id.* The plaintiff contended that the defendant’s failure to articulate the basis for denying the request violated NRS 239.0107 and, thus, waived its confidentiality arguments. *Id.* This Court expressly rejected the plaintiff’s waiver argument because it refused to read such a requirement into the NPRA. *Id.*

This holding is further supported by this Court’s previous rulings on the NPRA. In *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 266 P.3d 623 (2011),

this Court addressed an agency’s prelitigation duties under NRS 239.0107(d) after the lower court denied, in part, a petition for writ of mandamus for access to public records. One of the issues before this Court concerned whether an agency was required to submit a log, in the form of a *Vaughn* Index, in response to a public records request prior to the commencement of litigation. *Gibbons*, 127 Nev. at 884–885, 266 P.3d at 630–631. Consistent with the NPRA, this Court ruled that “[n]o log, in the form of a *Vaughn* Index or otherwise, is required under NRS 239.0107(1)(d).” *Id.*, 127 Nev. at 885, 266 P.3d at 631. Instead, if a public records request is denied, the entity “must provide the requesting party with notice and a citation to legal authority that justifies nondisclosure.” *Id.*

This Court further clarified that “merely pinning a string of citations” to a blanket denial due to confidentiality does not satisfy an entity’s prelitigation obligation under NRS 239.0107(1)(d)(2). *Id.* Because the State made a blanket denial and summarily listed case law, a Nevada Attorney General Opinion, and an internal policy, without any explanation, the Court concluded that the State did not meet its prelitigation duties under NRS 239.0107(1)(d). *Id.* Despite that conclusion, the Court did not determine that the State waived its confidentiality arguments. *Id.* Rather, *Gibbons* was remanded to the district court to instruct the State to provide the petitioner with a log and then determine whether the records at

issue were subject to disclosure based on the privileges asserted. *Id.*, 127 Nev. at 885–886, 266 P.3d at 631.

2. **The District Court’s Ruling is Consistent with the Legislative History in Refusing to Permit Waiver of Confidentiality.**

The District Court’s interpretation of NRS 239.0107(d)(1) is consistent with the legislative history, which demonstrates that the notion of waiver was expressly rejected by the Legislature and removed from the proposed statute. In 2007, the Legislature added the five-day response time to the NPRA. *See* Hearing on Senate Bill 123 (“SB 123”) Before Senate Committee on Government Affairs, 74th Leg. (Nev. Feb. 26, 2007). The purpose of the five-day rule was to ensure that requesters received some sort of response from the government entity and that the requesters had a deadline. *Id.* In fact, as initially proposed, SB 123 included language that would permit waiver of confidentiality in the event that the government entity failed to timely respond, but the Legislature had concerns about waiving statutory confidentiality provisions. *Id.* As such, SB 123 was amended to remove the waiver language related to an untimely response from the government. *See* Hearing on SB 123 Before Subcommittee of the Senate Committee on Government Affairs, 74th Leg. (Nev. April 9, 2007). Thus, the legislative history clearly demonstrates that a government entity’s failure to respond to a public

records request within the five-day period does not waive the confidential status of the records sought.

There is no doubt that the circumstances surrounding 1 October left LVMPD in a situation where it was difficult to respond to public records requests concerning the tragedy, especially those requests submitted to LVMPD less than 24 hours after the incident. Even if LVMPD did not meet its pre-litigation duties in responding to LVRJ's public records request, the NPRA does not require LVMPD to automatically turn over otherwise confidential records. *See Katz*, Dkt. No. 70440, at *3. Indeed, the Legislature expressly rejected the notion that a record loses its confidential status merely because the government does not assert a confidential status within the five-day period. Thus, the District Court correctly found LVMPD did not waive its ability to assert the confidential status of records.

H. THE DISTRICT COURT PROPERLY ORDERED PERSONAL IDENTIFYING INFORMATION TO BE REDACTED.

The District Court correctly required the redaction of personal information of victims and witnesses contained within government records. NRS 239B.030 unequivocally mandates that a government entity keep confidential any personal information contained within its records, unless such personal information is required to be included within the record. That is because a government entity

cannot require a person to provide it with personal information unless the law provides otherwise. NRS 239B.030. In particular, NRS 239B.030(5) provides:

Each governmental agency may ensure that any personal information contained in a document that has been recorded, filed or otherwise submitted to the governmental agency before January 1, 2007, which the governmental agency continues to hold is:

...

(b) Obliterated or otherwise removed from the document, by any method, including, without limitation, through the use of computer software, if the personal information is not required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant.

NRS 239B.030 indicates that the term “personal information” has the meaning ascribed to it in NRS 603A.040. NRS 239B.030(7)(b). Personal information is defined as:

[A] natural person’s first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:

(a) Social Security number.

(b) Driver’s license number, driver authorization card number or identification card number.

(c) Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person’s financial account.

(d) A medical identification number or a health insurance identification number.

(e) A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.

NRS 603A.040. The Legislature has also recognized the public policy and importance of maintaining the confidentiality of personal information related to witnesses and victims of crimes. *See, e.g.*, NRS 178.5691. Given that the information within LVMPD records contained personal information relating to victims and witnesses, that information is confidential per statute, and the District Court properly ordered redaction of the same.

The cases relied on by LVRJ can be distinguished. First, LVRJ cites to *PERS v. Reno Newspapers Inc.*, 129 Nev. 833, 313 P.3d 221 (2013), in support of its arguments that individuals' names are not confidential. *See* AB/OB 62. That case addressed the name of retired state employees, i.e., government officials. 129 Nev. at 837–38, 313 P.3d at 224–25. This holding is consistent with the District Court's Order that the names of government officials were not to be redacted. 7 AA 001321. LVRJ's reliance on *Reno Newspapers v. Sheriff* is similarly flawed. In *Reno Newspapers*, the Court dealt with the name of gun permitholder. 126 Nev. 211, 216, 234 P.3d 922, 925 (2010). Certainly, the name of a permittee is required to be included on the permit itself. Furthermore, the Court was not presented with the argument that NRS 239B.030 prohibits disclosure of personal information.

More recently, this Court adopted a balancing test addressing the privacy interests of individuals in the context of public records, known as the *Cameranesi* test,⁵ to determine whether a government entity may redact information subject to a public records request. See *CCSD v. LVRJ*, 429 P.3d 313, 319-20 (Nev. 2018). Under this balancing test, the government must first demonstrate that “disclosure implicate[s] a personal privacy interest that is nontrivial or more than de minimus.” *Id.* at 320. If the government meets its burden, the requester must show that the public interest sought to be advanced is a significant one and that the information sought is likely to advance that interest. *Id.*

Under *CCSD*, LVMPD need only demonstrate that a nontrivial privacy interest exists. 429 P.3d at 320 (Nev. 2018). Courts have ruled that “disclosure implicates personal privacy if it affects either the individual’s control of information concerning his or her person or constitutes a public intrusion long deemed impermissible under the common law and in our cultural traditions.” See *Cameranesi*, 856 F.3d at 638. “Disclosures that would subject individuals to possible embarrassment, harassment, or the risk of mistreatment constitute nontrivial intrusions.” *Id.* (Citations omitted).

⁵ See *Cameranesi v. U.S. Dep’t of Defense*, 856 F.3d 626 (9th Cir. 2017).

Here, there can be no doubt that disclosing the personal information of the victims and witnesses of the 1 October incident implicates the individuals' personal privacy interests because they have no control of the particular information concerning his or her person. Such disclosure could be seen as an unwarranted invasion of privacy. See *New York Times Co. v. United States Dep't of Justice*, 235 F. Supp. 3d 522, 539 (S.D.N.Y. 2017) (holding that third parties, whose personally identifying information is being withheld, have a strong privacy interest in not being identified with a criminal investigation); see *Fitzgibbon v. CIA*, 911 F.2d 755 (D.C. Cir. 1990) ("We have said quite recently that '[e]xemption 7(C) takes particular note of the strong interest of individuals, whether they be suspects, witnesses, or investigators, in not being associated unwarrantedly with alleged criminal activity.'" (alteration in original) (internal quotation marks omitted); *Cotton v. Adams*, 798 F. Supp. 22, 26 (D.D.C. 1992) (individuals named as witnesses or subjects of investigation have discernible privacy interest in avoiding the embarrassment and potential harassment that may result from public disclosure); *Sinsheimer v. U.S. Dep't of Homeland Sec.*, 437 F. Supp. 2d 50 (D.D.C. 2006) (disclosure of names of third parties mentioned in reports would have been extremely invasive of a well-recognized privacy interest); *Harrison v. Exec. Office for U.S. Attorneys*, 377 F. Supp. 2d 141, 148 (D.D.C. 2005) (concluding that names and identities of individuals within law enforcement

records have been consistently protected from disclosure). Courts have also ruled that public disclosure of photographs of the deceased constitutes an unwarranted public exploitation. *March v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012) (recognizing common law right to non-interference with a family's remembrance of decedent); *Favish*, 541 U.S. at 168 ("Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.").

The District Court concluded that LVMPD did not meet its burden in demonstrating the records *in their entirety* should be withheld. 7 AA 001318. The District Court, however, did recognize that the records sought contained personal identifying information. This decision is consistent with the NPRA because, if a record may be redacted, it cannot be withheld in its entirety. NRS 239.010(3) (requiring a government entity to redact confidential information contained within a record). Thus, the District Court did not abuse its discretion as its findings and order clearly comport with NPRA.

Although the District Court did not rely on NRS 239B.030 in particular, it nonetheless reached the correct decision. Furthermore, at the time the District Court decided this issue, this Court's recent opinion in *CCSD v. LVRJ* had not been

issued. As such, this Court may affirm a correct decision even if it was decided for the wrong reason. *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 549 (1994). This Court should uphold the District Court's Order as it relates to the information redacted from government records. Alternatively, this Court should remand this issue back to the District Court so that LVMPD may meet its burden under the *Cameranesi* balancing test recently adopted by this Court.

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DECLINED TO REQUIRE LVMPD TO PRODUCE A PRIVILEGE LOG.

1. LVRJ's Arguments are Waived as this Issue is Being Raised for the First Time on Appeal.

For the first time, on appeal, LVRJ raises the issue that LVMPD should have been required to produce a privilege log of all the information LVMPD redacted in accordance with the Court's Order. *See* AB/OB 63–65. This issue is not properly before this Court, as LVRJ never requested a privilege log of the redacted information, and, therefore, LVRJ's arguments must be deemed waived. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”) (citing *Britz v. Consolidated Casinos Corp.*, 87 Nev. 441, 447, 488 P.2d 911 (1971); *Harper v. Lichtenberger*, 59 Nev. 495, 92 P.2d 719 (1939)). Rather, LVRJ demanded that if LVMPD was

permitted to withhold records, LVMPD should produce an index of all documents withheld pursuant to this Court's holding in *Gibbons*. 1 AA 000143. Nothing in LVRJ's pleadings asks that LVMPD document its redactions in a log. Accordingly, LVRJ waived its ability to assert its arguments as it did not raise such arguments in the District Court. Therefore, the Court must affirm the District Court's Disclosure Order as to the privilege log.

2. The District Court Properly Determined that a *Vaughn* Index was Not Necessary.

In the lower court, LVRJ argued that LVMPD must provide a log of all the documents withheld so that LVRJ could properly oppose any assertions of confidentiality. 1 AA 000143. Because all of the records at issue were deemed public records and subject to disclosure, a *Vaughn* Index is pointless as it would not identify any records. Thus, the District Court did not abuse its discretion when it declined to require LMVPD to produce a *Vaughn* Index.

LVRJ asserts that it has no way of determining what is redacted or why. AB/OB 65. These arguments are wholly without merit. LVRJ is aware that the various reports and victim/witness statements have personal information redacted in accordance with the Court's Order. Notably, this is the first time LVRJ has ever mentioned anything about redactions. As this Court indicated in the previous Writ proceeding, the lower court still retains jurisdiction to enforce the District Court's

Order despite this instant appeal. *See* Order Granting Writ Petition in Part and Denying in Part in Case No. 76023. Thus, if LVRJ has issues with particular redactions within the records that it believes are not permitted by the Disclosure Order, it must raise that issue with the lower court—not with this Court.

J. A DISPATCH LOG IS INFORMATION DERIVED FROM A GIS, AND LVMPD MAY CHARGE FOR COSTS PURSUANT TO NRS 239.054.

LVRJ concedes that LVMPD’s CAD system is, in fact, a GIS pursuant to NRS 239.054. AB/OB 65–66. Nevertheless, it is LVRJ’s position that the dispatch log it received is not subject to the cost provisions outlined in NRS 239.054. To support its position, LVRJ argues that it did not ask for a copy of the CAD system itself, but only requested print-outs of dispatch logs. This interpretation is at odds with the plain language of NRS 239.054.

A government entity that produces information from a GIS, such as LVMPD’s CAD system, is permitted to charge a requester for additional costs. NRS 239.054(1). It is ironic that LVRJ asserts that NRS 239.054 is limited to electronic services or products after contending that a government entity cannot charge for electronic records. *See* AB/OB 51–54. Nevertheless, the language relied on by LVRJ is not within the statute itself but in the language of exhibits provided to the Legislature from other states. 6 AA 001060-001066. The GIS portion of AB 214 was discussed at length, and it was determined that because the

GIS was expensive for local government entities to maintain and operate, the Legislature believed it would prove more cost-effective by instituting a cost-sharing rationale through the statute. *Id.* at 001093–001105. Thus, information obtained as result of the use of a GIS, is subject to the reasonable costs outlined in NRS 239.054.

The production of the dispatch log, which is information produced from a GIS, falls squarely within the purview of NRS 239.054. As such, the District Court did not abuse its discretion by permitting LVMPD to charge LVRJ the reasonable costs in accordance with NRS 239.054 in relation to the dispatch log.

K. LVRJ’S REQUEST FOR AN EVIDENTIARY HEARING ON COSTS IS WAIVED, AND NOTHING IN THE NPRA REQUIRES AN EVIDENTIARY HEARING.

1. LVRJ Cannot Request an Evidentiary Hearing for the First Time on Appeal.

LVRJ asserts that the District Court abused its discretion when it failed to conduct an evidentiary hearing on the cost issue. Importantly, LVRJ never requested an evidentiary hearing on the cost issue. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983 (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”). Thus, LVRJ has waived its ability to assert its evidentiary hearing argument in relation to costs.

Notably, the District Court, *sua sponte*, asked if an evidentiary hearing would be appropriate in a limited circumstance:

THE COURT: So Metro disagrees with you. Do you think we need an evidentiary hearing to determine whether the system of maintenance of the documents by Metro would constitute a geographic information system?

MS. MCLEATCHIE: I think we do, Your Honor, I think we do.

7 AA 001373. While LVRJ indicated that an evidentiary hearing on the GIS may be necessary, it failed to raise the issue of an evidentiary hearing as it related to costs. Instead, LVRJ took the stern position that LVMPD is not entitled to costs at all, despite the clear language of the NPRA in NRS 239.052 and NRS 239.055. At the hearing discussing costs, LVRJ argued:

MS. MCLEATCHIE: I also think I heard the Court kind of ask earlier that if the end period doesn't address a cost for something, doesn't the Court need to try to figure out what the appropriate cost should be? And I think the answer to that is no.

Id. at 001374. LVRJ had ample opportunity during briefing or at the time of oral argument to ask for an evidentiary hearing on the cost issue but failed to do so. LVRJ cannot now seek an evidentiary hearing because the Court found that production of the records in this case requires extraordinary use and efforts on LVMPD's end, permitting LVMPD to charge for records. Because LVRJ failed to request an evidentiary hearing in the lower court, it cannot raise it for the first time on appeal, and this Court should decline to address LVRJ's argument.

2. The NPRA Does Not Require an Evidentiary Hearing to Determine Costs a Government Entity May Charge.

Nothing in the NPRA requires a court to hold an evidentiary hearing to determine the fees a government entity may charge in relation to the production of public records. Indeed, NRS 239.052(3) requires government entities to maintain a list of the fees that it charges at each office in which the governmental entity provides copies of public records. The purpose of NRS 239.052(3) is to avoid having an evidentiary hearing each and every time a government entity charges a fee for producing records related to public records requests. If an evidentiary hearing is necessary to determine costs, despite the fact that the government entity is required to maintain a list of its fees in relation to public records, anytime the government entity wanted to charge for public records, litigation would ensue. Moreover, such a proceeding would unnecessarily increase the costs of litigation.

Not only does LVRJ fail to cite to the record where it asked for an evidentiary hearing, its argument is not supported by any legal authority demonstrating that an evidentiary hearing is appropriate. LVRJ wrongly asserts that LVMPD has never provided any information documenting the actual cost. The Parties submitted supplemental briefs on the issue of costs, and LVMPD provided a declaration as to the estimated cost of the BWC footage with a detailed explanation of the process associated with disclosing BWC footage. Additionally,

LVMPD provided its fee sheet, which outlines the costs charged for various productions. Certainly, LVRJ could have asked the District Court for additional briefing in light of LVMPD's declaration, but it did not. LVRJ took the stern approach that LVMPD was not entitled to charge for public records. It cannot now ask for another opportunity to challenge the District Court's Order. Accordingly, this Court should deny LVRJ's request for an evidentiary hearing.

IV. CONCLUSION

In summary, the Court should conclude that NRS 289.830 requires inspection, rather than production, of BWC footage that contains confidential information too burdensome to redact. Additionally, the Court should allow LVMPD to charge costs for staff time when extraordinary use is necessary to produce records, including BWC footage and 911 calls based upon NRS 239.055. Finally, this Court should conclude that production of records necessitating extraordinary use of personnel or extraordinary resources requires an advance payment of the estimated fee.

As for LVRJ's cross-appeal, this Court should decline to entertain LVRJ's arguments concerning the District Court's err pertaining to a privilege log and evidentiary hearing because both issues are raised for the first time on appeal. The Court should also affirm the District Court's ruling that LVMPD did not waive its right to assert privileges or confidential statutes. Additionally, the Court should

uphold the District Court's decision requiring LVMPD to redact personal identifying information from its records. Lastly, the Court should determine that LVMPD may charge for the production of dispatch logs consistent with NRS 239.054.

Dated this 22nd day of March, 2019.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 22nd day of March, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT/CROSS-RESPONDENT**
LVMPD'S REPLY BRIEF AND ANSWERING BRIEF and REPLY
APPENDIX was filed electronically with the Nevada Supreme Court on the 22nd
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